

SUMMARY ANALYSIS OF AMENDED BILL

Author: Rainey Analyst: Gloria McConnell Bill Number: SB 1508

Related Bills: _____ Telephone: 845-4336 Amended Date: 04/14/98

Attorney: Janet Ballou

Sponsor: _____

SUBJECT: Child Support Delinquencies/Public Agencies/Claims for Damages/FTB Orders to Withhold

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced 02/06/98.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☐ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- ☐ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO _____.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED 02/06/98 STILL APPLIES.
- ☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would require public agencies to notify Franchise Tax Board (FTB) before making payments on administrative or judicial actions for damages (claims). If FTB determines the claimant owes child support arrearages, FTB would have five business days to issue to the public agency an order to withhold (OTW) payment from the claimant. If the OTW is not issued within five business days, the public agency is permitted to pay the claim to the individual. The withheld payment would be remitted to FTB 10 business days after receipt of the OTW. Upon receipt of the OTW, the public agency would be required to issue notice of the OTW to the claimant. Liens for medical or legal expenses would be subordinate to the OTW for child support. Disputes as to the amount of the medical or legal lien would be resolved by the court that heard the underlying claim. In the event the claimant owes both delinquent child support and personal income taxes, the withheld payment expressly would be applied to satisfy the child support delinquencies before the personal income taxes delinquency.

SUMMARY OF AMENDMENT

Under the April 14, 1998, amendments, a lien would not be automatically created and its related provisions would be deleted; disputes as to the amount of medical and legal expenses that would be superior to the OTW would be heard in the court

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
X N ___ NP
___ NA ___ NAR
_____ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved _____
Position Disapproved _____
Position Noted _____

Department/Legislative Director Date
Johnnie Lou Rosas **4/29/98**

Agency Secretary Date

By: _____ Date: _____

that heard the underlying claim; and in the event the claimant owes both delinquent child support and personal income taxes, the withheld claim payment expressly would be applied to satisfy the child support delinquencies before the personal income taxes delinquency.

Under the March 26, 1998, amendments, a claim subject to the OTW would be limited to a claim for damages and -

(1) The public agency:

- would be required to give the claimant notice as specified, and
- could contact the FTB in advance of the payment on the claim to determine if there is a support arrearage.

(2) The FTB, for child support collection purposes, would be required to:

- match either its inventory of accounts referred by district attorneys (DAs) for collection or the list compiled by the DAs for the financial institution account data match to determine whether a support arrearage exists, and
- issue the OTW to the public agency within five business days after notification to attach the payments. If the OTW is not issued within five business days, the lien is extinguished.

Additionally, medical and legal expenses expressly would be subordinate to the OTW, in addition to being subordinate to the lien.

Under the March 16, 1998, amendment, additional procedures are provided for issuing the OTW, which basically codify current practice. Additionally, when FTB either issues an OTW and the amount of the arrearage is satisfied or finds no support arrearage and notifies the public agency, the lien is extinguished.

SPECIFIC FINDINGS

Currently, FTB, as a state agency, may pay amounts to individuals on the basis of claims for damages, including civil monetary claims. These amounts to be paid are scheduled by FTB, or through the Board of Control (BOC) in certain cases, and the Controller pays the amount as directed by the state agency. FTB collects delinquent taxes and child support. For child support collection purposes, accounts are referred to FTB by DAs (Section 19271 of the Revenue and Taxation Code) and also DAs may forward to FTB a list of accounts, inclusive of the accounts referred to FTB, specifically for issuance of OTWs based on a match of financial institution account data (Section 19721.6 of the Revenue and Taxation Code).

Under FTB's current practice, the person receiving an OTW is instructed to notify the affected individual that the payment is withheld and will be transmitted to FTB within 10 days. Instructions also are provided as to whom to contact regarding the OTW and ensuing transmittal. Generally, if an individual owes both delinquent taxes and child support, FTB is required to collect the delinquent taxes before it can collect the child support. However, in the case of collections resulting from OTWs based on the financial institution data match, the collection must be applied only to child support as federal law does not allow the financial institution data exchange to be used for other purposes.

Under this bill, all public agencies (including FTB, as a state agency) would notify the FTB, as the collector of child support delinquencies, when payment of a claim, as defined, is to be made. FTB would use its child support account inventory or the list compiled for the financial institution data match to determine whether the claimant is an obligor. The bill also codifies FTB's current practice for purposes of OTWs issued on these claims. Also, if an individual owes both delinquent taxes and child support, FTB would be required to issue the OTW for purposes of collecting delinquent child support before collecting delinquent taxes.

Policy Consideration

Giving child support collection priority over taxes in the event of competing debts is contrary to the treatment specified in AB 1395 (Stats. 97, Ch. 614) and SB 247 (Stats. 97, Ch. 601), effective January 1, 1998.

Implementation Considerations

Staff believes this bill could be implemented without significant difficulties, but would require extensive cooperation and coordination between FTB and the other public agencies. Given the periodic nature of the payments, staff anticipates that the interaction between the FTB and the public agencies would primarily be a manual process, but automation would be encouraged to the extent possible. It also is anticipated that not all public agencies would comply immediately with the notification provisions because agencies may not be aware of the requirement or staffing resources may not be immediately available.

Additionally, the bill provides that disputes concerning the amount of liens for medical or legal expenses would be heard by the court in which the original claim was settled or awarded. The bill does not provide the forum for resolving disputes involving administrative claims.

As the bill moves through the legislative process, FTB staff will consider implementation of this bill as it may affect tax collection.

Technical Considerations

- This bill focuses on the collection of child support. However, as previously indicated, it does not expressly preclude the FTB from using the notification by the public agency for tax enforcement purposes, as long as child support collection is given priority over taxes. Amendment 1 expressly would allow the information to be used for tax enforcement purposes.
- In establishing that, for purposes of the provisions of this bill, child support collection would take priority over taxes, reference is made to the section of law (Section 19271) that generally gives tax priority over child support. However, reference to Section 19533 should also be made as provided in the attached Amendment 2.

FISCAL IMPACT

Departmental Costs

Given the potentially large volume of notifications that FTB may receive and the short time frame allowed for issuing the OTW, staff anticipates that FTB would need at least one additional position. Considering that the person would be required to be a technical expert for this specialized workload, work independently, coordinate activities with a wide variety of public agencies on a statewide basis, work within short time frames and the potential sensitivity associated with levying on claims for damages, the additional position would be at a senior compliance representative level. Therefore, for the first fiscal year, 1998/99, FTB's departmental costs would increase by approximately \$70,000 and for 1999/00 approximately \$89,000.

These costs do not take into consideration that the notification by public agencies could be used for tax collection purposes. However, as the bill moves through the legislative process, staff will take into consideration these departmental costs.

Collection Estimate

Based on the discussion below, additional collections of child support on accounts referred to FTB for collection are estimated to be \$1.1 million annually after full implementation. Any other child support collections attributable to this bill is not anticipated to be significant.

If the notification by public agencies were used by FTB also for collection of delinquent taxes, the bill's impact on this program is unknown, but will be explored as the bill moves through the legislative process.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Collection Estimate Discussion

The collection impact of this bill would depend on (1) the number of delinquent child support obligors who have money due from public agencies because of claims for damages, (2) the net amount of the claim, excluding medical and legal expenses that would be superior to the OTW, and (3) the total amount the claimant owes for delinquent child support.

Estimated collections were determined in several steps. First, the total amount of damages awarded was based on information from Philadelphia regarding a similar intercept program. In the first 18 months of implementation of its program, Philadelphia collected approximately \$500,000 for child support. However, approximately \$180,000 was attributable to an unusual, isolated case. This yields an average annual recurring collections of approximately \$213,000 ($\{\$500,000 - \$180,000\}/1.5$). According to the above source, of all lawsuits and claims filed in the state of Pennsylvania, one-third are filed in Philadelphia. This yields approximately \$640,000 in estimated statewide collections for Pennsylvania.

Based on the estimated number of child support delinquencies in both states, Pennsylvania represents approximately 40% of California's total. Then, assuming that the amount of claims for damages paid out in California and Philadelphia are equivalent, California, in comparison to Pennsylvania, should be able to yield approximately \$1.6 million in estimated collections. However, of the projected \$1.6 million, it is estimated that 10% is attributable to termination pay upon retiring from employment and other such claims not covered by this bill. Therefore, the yield for California is reduced to approximately \$1.4 million in potential collections.

The next step was to project the amount of yield that is attributable to increased collections as a result of this bill. Based on Philadelphia's data, it is estimated that approximately 20% of the amount collected would otherwise have been collected through other collection activities (i.e., collected through wage assignments, bank levies, or voluntarily paid). This factor reduces the potential collection yield to approximately \$1.2 million in increased child support collections. Of this amount, based on Philadelphia's experience, it is estimated that approximately 3% would be lost due to the obligor's reaction (i.e., claimants may not finalize or reach agreement on the claim rather than have it intercepted to pay child support) if the public agency contacts the FTB before the claim is awarded to determine if an arrearage exists.

The estimated impact of this bill, therefore, is \$1.1 million annually in additional child support collection.

BOARD POSITION

Neutral. At its meeting of March 26, 1998, the FTB took a neutral position on the February 6, 1998, version of this bill on a 2-0 vote, with Robin J. Dezember, on behalf of Member Craig L. Brown, abstained.

FTB'S PROPOSED AMENDMENTS
SB 1508, As Amended April 14, 1998

AMENDMENT 1

On page 5, line 28, strike out "Collection" and insert:

Nothing in this section shall preclude the notification under subdivision (b) from being used for tax enforcement purposes, however, collection

AMENDMENT 2

On page 5, line 33, after "19271" insert:

or to the collection priority established under Section 19533